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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,747	08/28/2001	Shelby Freland Thames	TH1802 (US)	5763

7590 03/03/2003

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EXAMINER

SHORT, PATRICIA A.

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940747

Applicant(s)

Examiner

Short

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on December 26, 2002.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-10, 12-15 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10, 12-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merck. The rejection is applied as in the previous Office action. As recognized by applicant, the differences in the examples in the specification and the examples of the reference are so numerous that is difficult to make a comparison. The only example of the invention in Table 8 of the specification that contains a filler is PT-30. In addition to numerous other differences, PT-30 appears to contain a polyester having 30 mole percent of 1-3-propane diol, while the polyesters of the reference have much smaller amounts of ethylene glycol. Thus, it can not be determined whether the improved impact strength of examples PT-30 is due to the use of 1-3-propane diol, larger amounts of 1-3-propane diol or some other difference in the examples of the reference and the filled example of the invention. A showing of criticality should include a side by side comparison with the closest prior art in which only one change is made, i.e. 1-3-propane diol is substituted for the ethylene glycol of the reference, and must be commensurate in scope with the claims.

Claims 1-3, 5-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsiat. The rejection is applied as in the previous Office action. As recognized by applicant, the differences in the examples in the specification and the examples of the reference are so numerous that is is difficult to make a comparison. The only example of the invention in Table 8 of the specification that contains a filler is PT-30. In addition to numerous other differences, PT-30 appears to contain a polyester having 30 mole percent of 1-3-propane diol, while the polyesters of the reference have much smaller amounts of ethylene glycol. Thus, it can not be

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determined whether the improved impact strength of examples PT-30 is due to the use of 1-3-propane diol, larger amounts of 1-3-propane diol or some other difference in the examples of the reference and the filled example of the invention. A showing of criticality should include a side by side comparison with the closest prior art in which only one change is made, i.e. 1-3-propane diol is substituted for the ethylene glycol of the reference, and must be commensurate in scope with the claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

P. Short

February 24, 2003

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PATRICIA A. SHORT
PRIMARY EXAMINER

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